

67C.119 Requirements for affirmative action plan for consolidated local government -- Responsibilities of Affirmative Action Office -- Employment opportunities to be equally available to all citizens -- Procedures governing awarding of contracts, leases, and other agreements with consolidated local government -- Hearing to ensure compliance and enforcement -- Affirmative action appeals.

- (1) The consolidated local government shall have an affirmative action plan that complies with all current federal guidelines and requirements relevant to local governments.
- (2) The mayor shall prepare and implement an affirmative action plan.
- (3) There shall be established under the direction of the mayor an office that shall be called the "Affirmative Action Office."
- (4) The Affirmative Action Office shall aid the mayor in preparing the plan, and shall be responsible for the day-to-day operation and implementation of the affirmative action plan.
- (5) An affirmative action plan, in addition to following all federal requirements, shall include good faith efforts to:
 - (a) Determine the extent to which minorities and women are underutilized in major categories;
 - (b) Identify and eliminate the specific causes of the underutilization;
 - (c) Identify and eliminate all employment practices that have an adverse impact on minorities, women, and others protected by applicable law and the relationship of which to job performance has not been clearly established;
 - (d) Rely exclusively on practices that are based on merits and other valid job related criteria;
 - (e) Develop substantial applicant pools of validly qualified minorities and women, special recruitment efforts, and other measures to insure that sufficient numbers of these groups are included to help reduce their underutilization;
 - (f) Develop, through special recruitment efforts and other measures, applicant pools in which handicapped persons are represented equitably;
 - (g) Project goals and timetables to include estimates of the representation of minorities and women likely to result from the operation of this affirmative action plan; and
 - (h) Establish organizational structures and monitoring systems that will ensure effective operation of its goals, and means for modification of the plan as needed.
- (6) All contracts, leases, or other agreements for materials, supplies, equipment, or, contractual services other than professional that, in the aggregate, exceed the amount for small purchases in KRS 45A.385 in any fiscal year shall be awarded in compliance with KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable.
- (7) Notwithstanding anything to the contrary in this section, the provisions of this

section shall apply to every person, firm, corporation, and association that has been awarded contracts, leases, or other agreements as provided by KRS 424.260 or with KRS 45A.343 to 45A.460, if applicable, that, in the aggregate, exceed the amount for small purchases in KRS 45A.385 in any fiscal year.

- (8) Employment opportunities generated directly or indirectly by the government of the consolidated local government shall be equally available to all citizens without regard to race, color, religion, national origin, marital status, physical handicap, sex, or age. In order to ensure that employment opportunities generated directly or indirectly by the consolidated local government are equally available, contractors and vendors shall be approved as provided by this section prior to the awarding of any contract, lease, or other agreement that requires an expenditure in excess of the amount for small purchases in KRS 45A.385 with the consolidated local government.
- (9) No person, firm, corporation, or association shall be awarded a contract, lease, or other agreement that requires an expenditure in excess of the amount for small purchases in KRS 45A.385 until and unless that person, firm, corporation, or association has been prequalified as determined by procedures and requirements enacted by ordinance by the consolidated local government.
- (10) No officer, employee, or agent of the consolidated local government shall accept a contract, lease, or other agreement that requires an expenditure in excess of the amount for small purchases in KRS 45A.385 with the consolidated local government until and unless that person, firm, corporation, or association has been prequalified as determined by procedures and requirements enacted by ordinance by the consolidated local government.
- (11) All persons, firms, corporations, or associations seeking to bid on contracts, leases, or other agreements that require an expenditure exceeding the amount for small purchases in KRS 45A.385 with the consolidated local government shall submit a request for prequalification as an eligible contractor, pursuant to the procedures and requirements enacted by ordinance by the consolidated local government.
- (12) The consolidated local government shall make available a list of all bidders who have been prequalified and shall distribute the list to the appropriate purchasing officers, employees, or agents of the consolidated local government.
- (13) Any person, firm, corporation, or association that submits an otherwise qualified bid for a contract, lease, or other agreement pursuant to the provisions of KRS 424.260, but that has not prequalified pursuant to this section, may be approved by the consolidated local government as provided by this section. Any person, firm, or corporation that is approved by the consolidated local government shall thereafter be qualified and considered eligible for award for a contract, lease, or other agreement.
- (14) The consolidated local government shall prequalify persons, firms, corporations, and associations seeking a contract, lease, or other agreement that requires an expenditure exceeding the amount for small purchases in KRS 45A.385 with the consolidated local government if, on an analysis of the workforce of that entity, the consolidated local government determines that:

- (a) The entity is not deficient in the utilization of minority groups or women;
 - (b) The entity has an acceptable, bona fide affirmative action plan;
 - (c) The entity is a small business that employs ten (10) or fewer individuals;
 - (d) The entity has a federally approved affirmative action program; or
 - (e) The consolidated local government has made a finding based on other reasonable criteria, and after consideration of the provisions of 41 C.F.R. 60-2, determines the entity does not require an affirmative action plan.
- (15) An acceptable affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include:
- (a) An analysis of the areas of the entity's workforce within which it is deficient in the utilization of minority groups and women; and
 - (b) Timetables to which the entity's good faith efforts shall be directed to correct the deficiencies and to achieve prompt and full utilization of minorities and women at all levels and in all segments of its workforce where deficiencies exist.
- (16) A bona fide affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government shall include a set of specific and result-oriented procedures, goals, and timetables to which an entity commits itself to apply every good faith effort in order to achieve equal employment opportunity. Procedures without effort to make them work are meaningless and effort undirected by specific and meaningful procedures is inadequate.
- (17) In reviewing an affirmative action plan for an entity seeking a contract, lease, or other agreement with a consolidated local government, the consolidated local government shall be guided by the relevant provisions of 41 C.F.R. 60-2 which outlines the requirements of affirmative action plans for federal contractors and vendors.
- (18) The consolidated local government shall use its best efforts, directly and through contracting agencies, other interested federal, state, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work pursuant to contracts, leases, and agreements that are the subject matter of this section or any agency referring workers or providing or supervising apprenticeship or training for or in the course of this work to cooperate in the implementation of the purposes of this section.
- (19) The consolidated local government on its own motion or on motion of any interested party shall cause hearings as it deems necessary for compliance or enforcement of this section.
- (20) The consolidated local government shall hold a hearing prior to imposing or recommending the imposition of penalties and sanctions for violation of this section. No penalty that would prohibit any contractor from obtaining future contracts under this section shall be made without affording the contractor an opportunity for a hearing.
- (21) Notice of any final decision or determination of the consolidated local government that affects the running of time for taking an appeal shall be mailed to all parties in

the matter, including the proposed contractor, lessor or other party, and the affected local government offices.

- (22) The consolidated local government shall establish an affirmative action appeals board for purposes of hearing appeals from any final decision relating to matters pertaining to this section. The board shall be composed of the county attorney, or his or her designee, the council president of the consolidated local government, or his or her designee, and a representative of the financial department of the consolidated local government, or his or her designee.
- (23) Any appeal from a decision of the consolidated local government shall be hand-delivered or mailed by certified mail to the affirmative action appeals board not later than thirty (30) days from the date of the local government's decision. The appeal shall set forth the grounds for the appeal. The appeals board shall notify all parties in writing of the time and place of a hearing. The hearing committee may issue subpoenas for any witnesses requested by either of the parties or in the appeals board's opinion necessary to the proper disposition of the matter to be heard. All parties shall be allowed legal representation, witnesses may be cross-examined, and the proceeding shall be recorded. The local government shall transmit, within ten (10) days after receipt of notice of appeal, all the original papers in action to the appeals board.
- (24) The appeals board shall have the power to require the contractor to furnish all necessary records and give testimony as to enable the board to render a fair and competent decision. The duty of the board shall be to review all records, hear all testimonies of witnesses, and determine whether the decision of the local government was correct. The decision of the appeals board shall be final. The decision of the appeals board shall be transmitted in writing to the appropriate offices of the local government for implementation and shall set forth specifically its findings of fact and conclusions relative to its determination. The administration of sanctions and penalties in accordance with that determination shall be the duty of the appropriate department or contracting agency of the consolidated local government.
- (25) (a) On request of the adversely affected party the appeals board may, on terms as are just, relieve a party from its final order of determination on the following grounds:
 1. Mistake, inadvertence, surprise, or excusable neglect;
 2. Newly discovered evidence that by due diligence could not have been discovered in time for the hearing;
 3. Perjury or falsified evidence; or
 4. Fraud affecting the proceedings other than perjury or falsified evidence.(b) The request shall be made within thirty (30) days after notification of the appeals board's final determination. A request under this subsection does not affect the finality of the order or determination or suspend its operation.
- (26) In accordance with the enforcement provisions of this section, the consolidated local government may cancel, terminate, suspend, or cause to be canceled,

terminated, or suspended, any contract, lease, or agreement that is the subject matter of this section for failure of the contractor or vendor to comply. Contracts, leases, and agreements may be canceled, terminated, or suspended absolutely or continuance of contracts, leases, and agreements may be conditioned on a program for future compliance as approved by the consolidated local government.

- (27) Any contracting agency shall refrain from entering into further contracts or extensions or other modifications of existing contracts, with any noncomplying contractor, until the contractor has established and will carry out personnel and employment policies in compliance with the provisions of this section.
- (28) Whenever the consolidated local government makes a determination regarding noncompliance by a contractor pursuant to this section, it shall promptly notify the appropriate contracting agency and other affected local government agencies and offices of the action recommended. The contracting agency shall take the action recommended and shall report the results of that action to the consolidated local government.
- (29) If the appeals board shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the consolidated local government.

Effective: June 25, 2013

History: Amended 2013 Ky. Acts ch. 95, sec. 2, effective June 25, 2013. -- Created 2000 Ky. Acts ch. 189, sec. 10, effective July 14, 2000.